



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 17, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2019OPA-0813

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 2	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics...	Sustained
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Sustained
# 4	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 5	5.001 - Standards and Duties 6. Employees May Use Discretion	Sustained
# 6	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Inconclusive)
Imposed Discipline		
30 Day Suspension		

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employee assaulted him at a tavern while intoxicated and off-duty. OPA added further allegations concerning the Named Employee's professionalism, his exercise of discretion, and potential dishonesty.

ADMINISTRATIVE NOTE:

In the initial DCM for this case, OPA recommended that the dishonestly allegation against the Named Employee be Sustained. However, after hearing the Named Employee's presentation at the Loudermill hearing and after reconsidering the evidence, OPA no longer believes that it can meet its evidentiary burden on this allegation. As such, OPA recommends that it now be Not Sustained – Inconclusive.

SUMMARY OF INVESTIGATION:

A. Events Preceding Incident



On the evening of November 2, 2019, Named Employee #1 (NE#1) attended the Seattle Police Foundation's Award Banquet where members of his squad were receiving awards. After the event, he continued to celebrate on his own. He communicated with a friend and they arranged to meet at the Red Onion Tavern, a bar at which NE#1 was a frequent patron. He traveled to that location and met his friend. NE#1's friend departed, and NE#1 remained until the bar closed. He estimated that he consumed approximately 10 drinks over the evening and stated that he was intoxicated.

During the time NE#1 was at the Red Onion Tavern, he encountered an individual, who is the Complainant in this case. The following facts are undisputed by all parties. The Complainant was carrying a firearm concealed in his belt while inside the bar, a violation of state law. NE#1, who became aware of the fact that the Complainant was carrying a firearm, attempted to confiscate it from him. A confrontation occurred in the street immediately outside of the tavern, which resulted in the Complainant briefly overpowering NE#1. NE#1 called for assistance and identified himself as a police officer. A bartender removed the firearm from the Complainant's possession and called 911. The 911 call was made at 0211 hours. The Complainant allowed himself to be taken into custody without further incident.

NE#1 provided multiple accounts of this incident in interviews to the investigating patrol officers, SPD's Force Investigation Team (FIT), and OPA. These accounts are summarized below.

B. NE#1's Statement at the Scene

The 911 call resulted in a radio broadcast of "Help the Officer." Several SPD officers responded to the scene, where they interviewed the Complainant and other witnesses present (see below). Some of the officers also spoke to NE#1. At that time, NE#1 stated that he and the Complainant had an interaction outside the bar and that, during the interaction, the Complainant allowed NE#1 to feel his waistband. NE#1 determined that the Complainant had a firearm and an altercation ensued. Notably, NE#1 did not mention being informed by anyone that the Complainant was armed or threatening. He declined to answer any further questions at the scene and requested an attorney and a union representative. The union representative and attorney responded to the scene and transported NE#1 to the East Precinct. Consequently, NE#1 was formally interviewed for the first time at 0421 hours at the East Precinct, over an hour after the incident.

C. NE#1's Initial Interview

During the East Precinct interview and after conferring with an attorney, NE#1 stated that, while at the bar, he was approached by an individual who pointed the Complainant out to him and informed him that the Complainant was armed. NE#1 stated that this individual told him the Complainant had been making threats. NE#1 stated that the Complainant was outside of the bar at the time. He said that the individual approached him because bartenders and several patrons were aware that he was a police officer. NE#1 also said that he could not remember speaking to the Complainant inside the bar that night. NE#1 was unable to recall or describe the individual who told him the Complainant was armed and making threats. He stated that it might have been one of the bartenders (referred to here as Witness #1) but that he could not be certain.

NE#1 stated that he went outside to speak to the Complainant. He described the interaction as a "social contact" and said that the Complainant allowed him to perform a weapons frisk. During the frisk, NE#1 discovered the firearm tucked into the rear waistband of the Complainant's jeans. NE#1 said that the Complainant admitted he had a firearm.



He described the Complainant as “compliant and cooperative.” NE#1 stated that, based on what had been reported to him by “staff and patrons” inside the bar, he was concerned that the Complainant would use the firearm.

NE#1 conversed with the Complainant until the Complainant had his arms at his side. At that time, NE#1 stated that he bear-hugged the Complainant to keep his arms tightly at his side and to prevent him from accessing his weapon. NE#1 stated that both he and the Complainant fell to the ground and that the Complainant was able to free one of his hands. NE#1 said that while they were on the ground, the Complainant gained the advantage and began to choke him. NE#1 was able to shout that he was an off-duty police officer. He recalled that Witness #1 disarmed the Complainant and made the gun inaccessible. NE#1 said that he was able to gain control of the Complainant until other officers arrived.

NE#1 stated that he did not call 911 to allow on-duty officers to handle the situation because the information provided to him made him believe police action was necessary. He further asserted that his proximity to the Complainant made such a call impractical. He explained that his intent in acting was to disarm the Complainant.

D. NE#1’s FIT Interview

NE#1 gave a second statement to FIT on November 4, 2019, two days after the incident. NE#1 recalled that an individual approached him in the bar and told him that the Complainant was threatening others and had a firearm. NE#1 stated that he did not know how the individual knew the Complainant was armed or if the Complainant had brandished his weapon. He stated that he spoke to the Complainant outside and was allowed to frisk his person. NE#1 stated that he did not identify himself as a police officer. At the time of the frisk, NE#1 stated that he and the Complainant were facing each other. He said that he stepped back from the Complainant and continued to talk while he devised a plan of action. NE#1 explained that he based his decisions off of the fact that the Complainant “had been accused of making threats” and had access to a firearm, that NE#1 was off duty and therefore unarmed, and that he was at a “disadvantage in the situation...when it would come to taking police action.” NE#1 acknowledged that he was intoxicated at the time but believed that the situation presented an exigent circumstance that made it impossible to delay police action. He articulated the reason for the exigency as the reported threats and the Complainant’s access to a firearm. He stated that he did not immediately detain the Complainant because he first wanted to determine if the Complainant was armed. NE#1 said that he did not call 911, nor did he ask another to call, because he thought there was not enough time. NE#1 indicated that his plan was to detain the Complainant until officers arrived. He did not explain how he planned to notify SPD of the incident.

NE#1 then attempted to wrap his arms around the Complainant’s waist to prevent access to the firearm, causing him and the Complainant to go to ground with NE#1 on his back and the Complainant on top of him. NE#1 stated that the Complainant used one hand to choke him. NE#1 was able to shout that he was a police officer. Witness #1 came from inside the bar and disarmed the Complainant, allowing NE#1 to get on top of the Complainant and pin him face-up on the pavement with the Complainant’s hands beside his head. SPD units arrived shortly thereafter. They took the Complainant into custody and interviewed all parties.

NE#1 was unable to recall how the Complainant was identified to him but believed that he was “pointed out” to NE#1; however, NE#1 was not sure. He reiterated that he was first notified by an individual inside the bar and then contacted the Complainant for the first time outside the bar.

E. NE#1’s OPA Interview



On February 27, 2020, OPA interviewed NE#1. NE#1 described how he developed a belief that police action was necessary. NE#1 stated that someone who he cannot describe reported to him that the Complainant had a gun and was making threats. NE#1 was unable to recall how the Complainant was identified to him.

He then contacted the Complainant outside the bar and gained permission to conduct a frisk. NE#1 described the physical altercation in a manner consistent with the prior interviews.

When questioned about his inability to identify the person who identified the Complainant, NE#1 stated that he had consumed 10 alcoholic beverages and was intoxicated. He stated that his intoxication affected his memory, perception, and decision-making. He told OPA that his inability to describe the person who identified the Complainant was due to intoxication, and said that, to the extent that his account was contradicted by others, intoxication was also the likely cause. NE#1 also stated that it was possible that he had misinterpreted one or more aspects of the situation at the time.

When asked why he did not immediately call 911 on being notified of the Complainant's threats, NE#1 stated that based on his experience, individuals sometimes relayed that they were armed when they were not, and would make threats that they were unable to carry out. As a result, he believed it prudent to determine if the Complainant was armed prior to acting. Once NE#1 determined that the Complainant was armed, he stated that he felt that de-escalation was neither safe nor feasible because, had he gone inside to call 911 or otherwise left the Complainant's presence, he would not have been able to continue to observe the Complainant. He said that he did not feel it was prudent to tell the Complainant that he was a police officer prior to acting because the Complainant was armed, and he was not. NE#1 was concerned that identifying himself could escalate the situation.

NE#1 was shown BWV of himself being interviewed by one of the responding officers. He stated that had he interviewed an individual who acted in the manner he did, he would have developed concerns that the individual had done something wrong. NE#1 stated that he grew up in a family of attorneys, and that, based on this, he was aware that it is permissible to request an attorney rather than participate in an investigation.

NE#1 told OPA that, in hindsight, he would have handled the incident differently and would have called 911 rather than taking police action while intoxicated. NE#1 stated that he used his discretion in responding to the incident and based his decisions on his experience as an officer. He stated that he felt he used discretion appropriately at the time but acknowledged that he had less than a year of experience and that his discretion was affected by alcohol. When asked, NE#1 stated that he did not knowingly fabricate any aspect of his account to benefit himself and reiterated that any inaccuracies were due to intoxication. NE#1 stated that he likely violated SPD's policies related to discretion (SPD Policy 5.001-POL-6) and professionalism (SPD Policy 5.001-POL-10).

F. Complainant's Statement at the Scene

The responding officers interviewed the Complainant after taking him into custody. He stated that he was visiting Seattle from Oregon and went to the Red Onion Tavern to sing karaoke. He stated that, before arriving at the bar, he was carrying his gun openly in the front of his waistband but that he moved it to the back and under his shirt because he "didn't want to be judged by it." He acknowledged that he was carrying his gun in the bar and did not have a Concealed Pistol License (CPL). The Complainant admitted that this was a crime.



While at the bar, he encountered NE#1 in civilian attire. He stated that NE#1's dress clothes made him "stick out" at the bar and that as a result, the Complainant was curious about NE#1. He contacted NE#1 inside the bar, and they had a conversation, which the Complainant characterized as a question-and-answer game. The bar was closing, and the Complainant stated that he and NE#1 continued the conversation outside. The Complainant stated that NE#1 did not identify himself as a police officer or obtain his permission to frisk him. The Complainant stated that NE#1 felt around his waist and then "tackled" him. The Complainant stated that they rolled around on the ground and that he gained the advantage. He said that at that point, NE#1 started shouting that he was a police officer and that, consequently, the Complainant let up and submitted to NE#1 because he did not have any intention of fighting the police. He characterized NE#1's action as shocking and stated that they had been having a friendly conversation until, "out of nowhere," NE#1 tackled him.

G. Complainant's Statement to FIT and OPA

The Complainant also provided statements to FIT and OPA. He explained that he was from Oregon and was in town to pick up items belonging to his daughter. He found the Red Onion Tavern online and went there alone. He said that he carried a pistol because he was uncomfortable in the city and was availing himself of the right to bear arms for his protection. He stated that, while at the bar, he sang karaoke, and conversed with the bartender and NE#1. He stated that he had no issues with anyone at the bar and did not speak with anybody else. He said that he observed NE#1 sitting at the bar and that NE#1 seemed upset. He spoke to NE#1 because he was curious about him. They began playing the question-and-answer game inside the bar before stepping outside. The Complainant stated that he had approximately "three double gin-and-tonics" and was intoxicated.

He stated that NE#1 asked him to turn around and that he did so, believing it to be part of the game. He then felt NE#1 feeling around his back and waist. The Complainant turned around and NE#1 tackled him. The Complainant described the incident consistently with his statement at the scene. He said that NE#1 did not identify himself as a police officer, and the Complainant denied provoking a fight. He stated that he was worried NE#1 was trying to grab his gun and that he acted in self-defense. He stated that, because NE#1 did not identify himself as a police officer, he felt that NE#1's actions constituted assault.

H. Witness Statements

Responding officers conducted witness interviews at the scene, and FIT conducted additional interviews shortly afterward.

Witness #1 was working as a bartender at the Red Onion Tavern on the night of the incident. He stated that he saw NE#1 seated at one end of the bar and the Complainant seated at another end. He did not recall that the Complainant caused any issues, and he did not see a gun prior to the incident. Witness #1 did not recall anyone stating that the Complainant had a gun. While closing the bar immediately prior to the incident, he saw NE#1 and the Complainant talking and said that they left together to continue talking outside.

Witness #1 recalled that, after he closed the bar, he heard NE#1 yelling "help me, he's got a gun" and "help me, I'm a police officer" from outside. Witness #1 observed the Complainant on top of NE#1. The gun was visible in the Complainant's waistband and Witness #1 took it. He handed the gun to a man who had been hosting karaoke inside the bar (Witness #2) and Witness #2 placed it behind the bar. Witness #1 stated that the Complainant said "okay, I'm arrested" and surrendered to NE#1. Witness #1 then called 911.



Witness #2, the karaoke host, was interviewed at the scene. He stated that he was not aware of the Complainant having a gun and that he observed all the individuals who sang, including the Complainant. He did not have any reason to think the Complainant was being threatening, although he recalled the Complainant was “eccentric.”

Witness #3, another bartender, was interviewed at the scene and by FIT. He said he was not aware of any disagreements at the bar prior to the incident, or any threats made by the Complainant. He did not witness the interaction between the Complainant and NE#1.

Witness #4, who was the friend NE#1 met at the Red Onion Tavern, was not present for the incident. She recalled seeing the Complainant seated at the bar and singing karaoke. She did not see him involved in any disturbance and was unaware of any threats or incidents he might have been involved in. She also said that she knows NE#1 and she was surprised that he was involved in a disturbance.

OPA made a criminal referral to SPD. SPD reviewed this case, as did the City Attorney, and determined that the filing standards for assault charges against NE#1 were not met. The reviewers identified potential policy violations and returned this case to OPA for action.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. It is a crime to assault another. RCW 9A.36.041. The law provides a complete defense to assault where the force used was “necessarily used by a public officer in the performance of a legal duty.” RCW 9A.16.020(1). It is also a defense for any person to use force “in preventing or attempting to prevent an offense against his or her person” or in defense of another, provided the force used is not more than necessary. RCW 9A.16.020(3).

OPA lacks a basis to find that NE#1 violated the law when he used force against the Complainant. NE#1 stated that he used force in the process of taking police action to detain the Complainant for committing a crime. He further stated that, at the time, he believed the Complainant made threats of violence against individuals in the bar.

While ill-advised and contrary to policy, OPA finds that NE#1 was attempting to take police action at the time of the incident. As such, OPA concludes that there is an insufficient basis to determine that NE#1 committed a criminal assault. Moreover, OPA defers to the conclusion of the City Attorney’s Office that there was not probable cause to believe that NE#1 committed this crime.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #1 - Allegation #2

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics...



“De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.” (SPD Policy 8.100-POL-1.)

The policy further instructs that: “When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.” (*Id.*) Officers are also required, “when time and circumstances permit,” to “consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors” such as “mental impairment...drug interaction...[and/or] behavioral crisis.” (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident “when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.” (*Id.*)

The policy gives several examples of de-escalation, which include: mitigating the immediacy of the threat to give officers time to use extra resources and to call more officers or specialty units; and increasing the number of officers on scene to thus increase the ability to use less force. (*Id.*) Other examples of de-escalation include, but are not limited to:

- Placing barriers between an uncooperative subject and officers;
- Containing the threat;
- Decreasing exposure to the potential threat by using distance, cover and concealment;
- Avoidance of physical confrontation unless immediately necessary to protect someone or stop dangerous behavior;
- Using verbal techniques, such as “Listen and Explain with Equity and Dignity” (LEED) to calm an agitated subject and promote rational decision making;
- Calling extra resources, including CIT officers and officers equipped with less-lethal tools; and
- Using “any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject.

(*Id.*) De-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department’s policy and expectations.

OPA finds that NE#1 failed to de-escalate prior to using force. NE#1 admitted in his OPA interview that he did not use any de-escalation tactics and stated that he believed it was not safe to do so. OPA disagrees with NE#1’s assertion that he had no opportunity to de-escalate the situation before resorting to force. Assuming the truth of NE#1’s statement that he was informed the Complainant had been making threats and was armed, NE#1 could have elected to observe the Complainant’s behavior for escalation and could have summoned assistance from on-duty SPD personnel.

In addition, no witness statements supported the existence of exigency such that immediate police action was necessary or appropriate. Rather, the witnesses agreed that the Complainant was behaving peacefully. OPA also finds the Complainant’s statement that he believed NE#1 was attempting to take his firearm for an aggressive purpose to be credible and reasonable under the circumstances. NE#1’s decision to take police action while off duty,



intoxicated, and without identifying himself served to escalate the situation and was the proximate cause of the physical altercation that occurred. For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

8.200 - Using Force 1. Use of Force: When Authorized

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

OPA finds that NE#1’s use of force violated Department policy. An officer’s decision to use force is evaluated against an objective standard of reasonableness given the facts and circumstances in which the officer actually found himself. OPA finds that, in this case, NE#1 unreasonably decided to resort to force while off-duty and intoxicated. While NE#1 cited exigent circumstances that made his use of force reasonable, OPA did not find any evidence supporting his belief that an exigency existed. Indeed, OPA found no evidence establishing that the Complainant made any threats at all.

The force NE#1 used was also not necessary under the circumstances. As noted above, there was no indication that the Complainant posed a threat requiring an immediate police response. Even if it was true that an individual reported that the Complainant was behaving in a threatening manner, witness testimony suggests that, by the time of the incident between NE#1 and the Complainant, the two of them were speaking and interacting cordially. As noted above, reasonable alternatives existed to immediate police action.

Finally, OPA is unable to say that the force NE#1 used was clearly proportional to the threat posed by the Complainant. While it is undisputed that the Complainant was armed and it was conceivably possible that the Complainant would use deadly force against NE#1, no facts or testimony support that there was a plausible risk the Complainant would do so. Rather, OPA finds that the preponderance of the evidence establishes that the Complainant would not have posed any threat had NE#1 not escalated the situation. Moreover, the mere fact that an individual possesses a weapon, without more, does not justify the use of force.

Ultimately, when applying a preponderance of the evidence standard, OPA finds that NE#1 violated SPD’s use of force policy. As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegations #4

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional



SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.)

OPA finds that NE#1’s conduct during this incident violated SPD’s professionalism policy. NE#1’s actions, while knowingly intoxicated, were well outside of the expectations for his conduct set by the Department. His admittedly poor decision-making resulting in a criminal investigation, a FIT investigation, the consideration of criminal charges, and an OPA investigation. He put his fellow officers in an incredibly problematic position when they were required to investigate this matter, and he did the same to the occupants of the Red Onion Tavern, the Complainant, and bystanders.

Moreover, his decision to take police action while intoxicated was, in and of itself, a violation of SPD policy. (See SPD Policy 5.170-POL-1.) This is further evidence of his lack of professionalism.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #5

5.001 - Standards and Duties 6. Employees May Use Discretion

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.)

OPA finds that NE#1 failed to exercise his discretion reasonably at multiple junctures. Namely, he chose to investigate a potentially dangerous situation alone and without backup, chose to use force alone, and chose not to call for assistance before doing so. NE#1 made each of these decisions while he was aware that he was intoxicated and was not permitted to engage in law enforcement activity.

NE#1 justified his decisions on the basis that an exigency existed which prevented him from contacting 911 and required an immediate, forceful police response; however, the evidence and witness testimony establishes that no such exigency existed.

As discussed above, OPA finds it probable that NE#1’s intoxication contributed to his failure to reasonably exercise discretion, and his decision to take action in a state of intoxication was itself unreasonable. For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #6

5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.



In evaluating this allegation, OPA finds that NE#1's account of events was contradicted by the witness statements obtained by both FIT and OPA. In particular, there is no evidence that exists to support NE#1's contention that the Complainant threatened individuals in the bar, and OPA was unable to identify any evidence suggesting that an individual reported those threats to NE#1. Indeed, NE#1 could not do so either. Likewise, the evidence suggested that NE#1 and the Complainant spoke to each other first inside the bar, rather than making contact initially outside as NE#1 reported. Ultimately, OPA could identify no evidence suggesting that the Complainant made any person feel threatened and could not ascertain how NE#1 developed a suspicion that the Complainant was armed.

NE#1 addressed his potential lack of candor during his OPA interview. He described being extremely intoxicated – which is consistent with the video evidence – and stated that this may have affected his perception of the incident. Indeed, he acknowledged that his state at the time likely caused him to recall and relay an accounting of the incidents that were not accurate. In addition, at his Loudermill hearing, NE#1 raised that OPA and FIT did not interview everyone that may have been in the bar that evening and, as such, it was not conclusively foreclosed that someone did, in fact, report feeling threatened by the Complainant.

After further deliberation, OPA believes that it is unable to prove dishonesty by the evidentiary standard required. In reaching this conclusion, OPA finds that NE#1's intoxication level may have caused him to perceive things that were inaccurate, which he then relayed after the fact. This very real possibility prevents OPA from establishing intent. In addition, while OPA does not believe that the just cause requirement mandated the interviews of everyone in the bar to foreclose the possibility that a complaint was made to NE#1 about the Complainant being armed, it is possible – even if unlikely – that someone did so. This, when coupled with NE#1's intoxication level – provides a basis to modify OPA's decision.

The above being said, it remains that NE#1 admittedly provided a number of inaccurate statements during the multiple interviews he provided in the aftermath of this incident. It further remains that there are questions concerning whether this was intentionally done. Ultimately, OPA's changing of its findings it not purposed to be an exoneration of NE#1, but simply a recognition that OPA cannot meet the requisite burden of proof in this case.

As such, OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**